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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,335	07/31/2001	Thomas E. Anderson	41007.P006	4127
29127	7590	07/13/2005	EXAMINER	
HOUSTON ELISEEVA 4 MILITIA DRIVE, SUITE 4 LEXINGTON, MA 02421			JAROENCHONWANIT, BUNJOB	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/920,335	ANDERSON ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Bunjob Jaroenchonwanit	2143

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 28 March 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-38 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-38 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date . . . . .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: . . . . .

**DETAILED ACTION**

1. Applicant's arguments, see remark, filed 3/28/05, with respect to claims 1-38 have been fully considered and are persuasive. The previous rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Foster, as stated below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 2, 5, 6, 17, 18, 21, 22, 31, 32, 37 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Foster et al. (US. 2003/0202536, "Foster", hereafter).
4. Regarding claims 1, 6, 17, 22, 31, 32, 37 and 38, Foster discloses a method comprising: determining by a first network management device, separate and distinct from a first networking device of a network, whether the first networking device is meeting a service level for a first group of network traffic of the network serviced by the first network device; and regulating a second group of network traffic of the network, also being serviced by said first networking device, to assist the first networking device in meeting the service level for the first group of network traffics the second group of network traffic being separate and distinct from said first group of network traffic (network manager 357, figure 3A, controls connection to ensure sufficient resource available for one by limiting the other, ¶ 69).
5. Regarding claims 2 and 18 , Foster discloses the method of claim 1, wherein said service level is a selected one of a service level goal and a service level commitment of said first networking device for said first group of network traffic of the network serviced by said

first networking device (service level is in accordance with class of service (COS), which, among other factors, guarantee level of bandwidth, ¶ 69).

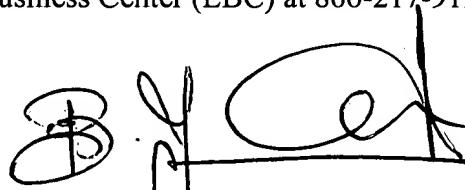
6. Regarding claims 5 and 21, Foster discloses networking device is routing device (Foster teaching related directly to network switches or routers, ¶20).
7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
8. Claims 3, 4, 7-16, 19, 20, 23-30 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster, as applied to claim 1, above.
9. Regarding claims 3, 4, 10-16, 19, 20, 26-30 and 34-36, Foster discloses the invention substantially, as claimed, including an inventive concept that is applicable for assessing network resource and limiting a network traffic to guarantee level of service QOS or to accommodate another network traffic to meet the QOS level. To apply Foster's inventive concept to regulate network traffic from one group over another, regardless of distinction, separation, same or different sources or destinations, would have been obvious to one of ordinary skill in the art that was a matter of implementation choice, which depend upon individual desirable, does not produce unexpected result.
10. Regarding claims 7-9 and 23-25 Foster discloses the invention substantially, as claimed, as described in claim 6, including an inventive concept that is applicable for assessing network resources and limiting a network traffic to guarantee level of service QOS or to accommodate another network traffic to meet the QOS level. To apply Foster's inventive

Art Unit: 2143

concept to regulate network traffic from one group over another, regardless of where the monitoring function has been perform, or selecting reliability or service level or performing monitoring and regulating from the same or different devices, would have been obvious tone of ordinary skill in the art that was a mater of implementation choice, which depend upon individual desirable, doe not produce unexpected result.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bunjob Jaroenchonwanit whose telephone number is (571) 272-3913. The examiner can normally be reached on 8:00-17:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bunjob Jaroenchonwanit  
Primary Examiner  
Art Unit 2143

/bj  
7/6/05